

May 4, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9901602**

MARK WOLF
Code Enforcement Appeal

Location: 4032 138th Avenue Southeast

Appellant: **Mark Wolf**
P.O. Box 50046
Bellevue, Washington 98015-0046
Telephone: (425) 941-6066

King County: Department of Development and Environmental Services,
represented by **Jeri Breazeal**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7264
Facsimile: (206) 296-6644

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal (charge 1); dismiss charge 2; extend compliance dates
Examiner's Decision:	Deny appeal (charge 1); dismiss charge 2; extend compliance dates

EXAMINER PROCEEDINGS:

Hearing Opened:	April 20, 2005
Hearing Closed:	April 20, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On February 15, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Mark and Melissa Wolf that alleges code violations at property located at 4032 138th Avenue Southeast. The Notice and Order cites the property for violations by:

- (a) “Construction of an accessory structure without the required permits, inspections and approvals in violation of Section 16.02.240 and 21A.28.020 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.
- (b) “Use of an accessory structure for business storage in violation of the standards for a home occupation as set forth in Section 21A.30.080 of the King County Code.”

The Notice and Order required that by March 15, 2005 the required permits, inspections and approvals be applied for and obtained for the accessory structure, with a complete application submitted by that date. All deadlines for requested information and permit obtainment were to have been met during the application period. Alternatively, the non-permitted construction was required to be demolished by March 15, 2005. In addition, the business storage use was required to be ceased or brought into conformity with home occupation standards by March 15, 2005.

2. Appellant Mark Wolf, owner of the property, filed a timely appeal of the Notice and Order. The appeal raises the following claim:

- A. Mr. Wolf had filed for permits for the accessory structure and had assumed that they had been issued and properly executed. (DDES confirmed at hearing that the permits were applied for, but noted that they had not been picked up and had accordingly lapsed and become void.) Mr. Wolf had assumed that the enforcement matters at hand had therefore been resolved in the past.

At hearing, Mr. Wolf noted that all of the subject construction work was performed prior to his purchase of the property, and stated his willingness to reapply for the necessary permits for the accessory structure and resolve the matter. Mr. Wolf testified that the accessory structure was not being used for business purposes, but only for storage of personal recreational equipment.

3. DDES confirmed that usage of the accessory structure for personal purposes is in conformity with applicable land use regulations, essentially stipulating to dismissal of Charge 2.
4. DDES also confirmed Mr. Wolf’s innocent purchaser status with regard to the construction of the accessory structure onsite.
5. The evidence in the record supports a finding that Charge 1 of the Notice and Order is correct with regard to the construction of the accessory structure without the necessary permits and approvals.

CONCLUSIONS:

1. Regardless of Mr. Wolf's innocent purchaser qualification in this case, he as the property owner is still responsible for abating the violation by obtaining the necessary permits for the accessory structure. He is not liable for committing the original violation and is therefore not subject to penalties for the original violation, but is still responsible for correcting it.
2. As the accessory structure was constructed without the necessary permits, inspections and approvals in violation of County code, Charge 1 of the Notice and Order is correct and shall be sustained.
3. Since the accessory structure is not being used for business purposes, but only for personal storage, its use is not in violation of the home occupation limitations as charged in the Notice and Order, to which DDES essentially stipulates. Charge 2 of the Notice and Order is therefore incorrect and shall be reversed and dismissed.
4. As the Notice and Order deadlines for compliance by obtaining the necessary permits and approvals for the construction of the accessory structure have been obviated by the time taken up the appeal, the dates shall be modified accordingly.

DECISION:

The appeal is DENIED with respect to Charge 1 of the Notice and Order, except that the deadlines for regulatory compliance are revised and extended as stated in the following Order. Charge 2 of the Notice and Order is REVERSED and DISMISSED.

ORDER:

1. Apply for and obtain the required permits, inspections and approvals for the accessory structure, with a complete permit application to be submitted *no later than* **July 5, 2005**. Alternatively, a demolition permit may be obtained *no later than* **July 5, 2005** and the accessory structure removed and demolished with the demolition debris removed from the premises *no later than* **August 5, 2005**. If the necessary permits for the accessory structure are denied by the County, a demolition permit shall be obtained no later than 30 days after the date of denial and such demolition shall be performed no later than 60 days after the date of denial.

ORDERED this 4th day of May, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 4th day of May, 2005 via certified mail to the following:

Mark & Melissa Wolf
P.O. Box 50046
Bellevue, Washington 98015-0046

TRANSMITTED this 4th day of May, 2005, to the following parties and interested persons of record:

Mark & Melissa Wolf
P.O. Box 50046
Bellevue WA 98015-0046

Jeri Breazeal
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
Code Enf. Supvr.
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
Code Enf. Section
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE APRIL 20, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9901602.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Jeri Breazeal, representing the Department; and Mark Wolf, the Appellant.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES Staff Report
- Exhibit No. 2 Copy of Notice & Order issued February 15, 2003
- Exhibit No. 3 Copy of Appeal received before March 4, 2005
- Exhibit No. 4 Copies of codes cited in the Notice & Order
- Exhibit No. 5 Copy of the comment screen from permit application B00M1224
- Exhibit No. 6 Copy of correspondence between Mr. Wolf and the owner of the parcel he is using for vehicular access
- Exhibit No. 7 Photographs (2) taken by Jeri Breazeal on December 10, 1999
- Exhibit No. 8 Photographs (2) taken by Jeri Breazeal on April 26, 2000
- Exhibit No. 9 Photographs (5) taken by Jeri Breazeal on March 11, 2004
- Exhibit No. 10 Photographs (3) taken by Jeri Breazeal on January 26, 2005